

competition for SWBT. This provision prevents compliance with Section 271(c)(2)(B)(i) of the competitive checklist.

43. SWBT's SGAT also requires that *all* intraLATA traffic be routed to SWBT. Not only does it appear that SWBT wants new entrants to give back all the intraLATA traffic that is carried over unbundled local switching, for which SWBT will have been compensated, it also appears that SWBT would require that a new entrant who is providing intraLATA services wholly over its own facilities would be required to give SWBT all of the new entrant's intraLATA toll revenue. This provision precludes the provision of UNEs at cost based rates, violates Section 251(c)(3) of the FTA and fails to comply with Section 271(c)(2)(B)(ii) of the competitive checklist.

XVII. RESALE

A. SWBT's Resale Proposals Do Not Fulfill Requirements of the Competitive Checklist.

44. The resale provisions incorporated to date in approved SWBT interconnection agreements, and in SWBT's proposed SGAT, do not fulfill the Section 271 competitive checklist requirement of the FTA. Section 271 (c)(2)(B)(xiv). Section 271 requires that resale be offered in accordance with Sections 251(c)(4) and 252(d)(3). SWBT's proposed resale provisions do not meet the requirements of Section 251(c)(4). Under the FTA, the incumbent LEC shall not prohibit resale nor impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunication services with the exception of certain restrictions on cross-class reselling. The FCC found that:

Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the pro-competitive goals of the 1996 Act to presume resale

restrictions *and conditions* to be unreasonable and therefore in violation of Section 251(c)(4).⁹

The FCC also found that such restrictions were not limited to those found in an interconnection agreement but also included *conditions* and *limitations* contained in the incumbent LEC's underlying tariff. Under the terms of each of SWBT's existing interconnection agreements, while SWBT will make most services available for resale, SWBT will impose all tariff restrictions, limitations and conditions on the use and resale of its retail services. The use and resale restrictions in SWBT's tariff are contrary to Section 251(c)(4)(B).

45. Specifically, if SWBT chooses to put two or more services in the market which meet the needs of a new entrant in providing services to end users, with very limited exceptions, which I will discuss later in my statement, the new entrant should be able to purchase and resell the service without arbitrary restrictions. Because SWBT's proposal unreasonably limits resale, it does not comply with Section 271(c)(2)(B)(xiv) of the competitive checklist.

46. Resale, without significant or arbitrary restrictions, provides an economic self-check on discriminatory pricing by an incumbent local exchange carrier. The lifting of resale restrictions on Wide Area Telecommunications Service (WATS) is a good example. Restrictions on the resale of services allow companies to price the services at levels attractive to large users without fear that the services could be used by their new competitors to aggregate the use of residential and small business customers.

47. The lifting of resale restrictions provides a check on discriminatory pricing not only across other resold services but across all services and UNEs by allowing new entrants to purchase any SWBT service or element that meets the new entrant's need in providing service to end users. For example, if SWBT sells a service in the retail market for a price that is less

⁹ *Id.* at ¶ 939 (emphasis added).

than it makes the equivalent UNEs available, a new entrant should be able to buy and resell that service without restriction. Otherwise, SWBT could inappropriately price individual services below the price of their UNEs, thereby insuring that new entrants would be relegated to only reselling the SWBT service and only in the manner deemed proper by SWBT, significantly hampering the development of facilities-based competition.

48. Resale restrictions should be extremely limited and narrowly tailored. The only specific restrictions that should be allowed are those expressly specified by the FCC, including: (1) restrictions which would prevent the cross-class reselling of residential services to business end users; and (2) limitations on the resale of means-tested services to customers who do not qualify under the means test.¹⁰ An example of a means-tested service is LifeLine service. To the extent that special services or prices are made available to schools, hospitals, or governmental entities to meet public policy objectives, resale of these might also be properly limited to the class of customer intended to use the service.

49. SWBT should not be allowed to impose any other arbitrary tariff restriction on the lawful use and resale of its services available for resale. SWBT should not impose restrictions on the aggregation of traffic from two or more of a new entrant's customers on any service available for resale or continuous property restrictions.¹¹ The mere proposition that these and other restrictions, limitations and conditions were approved with respect to end users in a monopoly environment, prior to passage of the Federal Act, is not proof that retaining such restrictions on new entrants is reasonable. SWBT has submitted little evidence to support the imposition of its tariff restrictions, and, therefore, SWBT has not rebutted the presumption of

¹⁰ *Id.* at ¶¶ 962 and 964.

¹¹ Sprint Agreement, Attachment Resale, §§ 5.2, 5.3 and 5.6. Similar provisions are contained in all other approved interconnection agreements and SWBT's SGAT.

their unreasonableness. Any such restrictions are, therefore, in violation of Section 251 (c)(4) and do not comply with Section 271(c)(2)(B)(xiv) of the competitive checklist.

50. The FCC chose not to discourage efficient uses of technology through restrictions on resale of flat-rated offerings to multiple users.¹² In addition, an incumbent LEC should not be allowed to restrict the aggregation of multiple customer's traffic to meet minimum use requirements of incumbent LEC volume discounts.¹³ As previously stated, SWBT intends to prohibit these uses by reliance on its tariff restrictions. If SWBT wishes to impose any such restriction, it bears the burden of demonstrating that the restriction is nondiscriminatory, does not violate sound economic pricing principles and would not delay the development of competition in the local exchange market. However, so long as these restrictions are in place, SWBT has failed to satisfy Section 271(C)(2)(B)(xiv) of the competitive checklist.

B. SWBT's Proposed Service Connection Charges Impede Price Competition.

51. SWBT's existing, approved interconnection agreements and SGAT contain provisions regarding service connection charges which will impede price competition by effectively providing a double recovery of cost or the recovery of costs SWBT should no longer incur when it implements appropriate operational interfaces for resale. This double/mis-recovery of costs by SWBT has the effect of reducing the effective wholesale discount determined by the Commission. Therefore, SWBT's proposal regarding service connection charges violates Section 251(c)(4) and fails to comply with Section 271(c)(2)(B)(xiv) of the competitive checklist.

52. At the time the customer converts from SWBT to a new entrant, SWBT intends to apply all of its service connection charges, in addition to the customer conversion charge and

¹² FCC Order, ¶ 963.

¹³ *Id.* at ¶ 953.

non-recurring charges which would apply if an end user added new features or made changes to features.¹⁴ This would result in either the double recovery of its costs, or the recovery of costs which SWBT should no longer incur, when it has fully implemented the appropriate electronic interfaces and operational support systems for resale.

53. Today, because customers currently have only one choice of a local service provider, a customer must call a SWBT service representative to obtain service. The service representative must spend a substantial amount of time talking to the customer in order to determine the type of service the customer requires and information such as name, address, billing instructions, *etc.*, which the representative will input into the SWBT ordering system. All of these labor intensive functions will now be performed by the new entrant and once SWBT meets its obligation to implement the appropriate operational support systems, should be sent by direct electronic feed to the SWBT ordering system.

54. It would be unreasonable for a new entrant to pay for electronic access to the operational support systems and then also have to pay a service order charge which is based on SWBT's efforts in marketing its own local exchange service to customers. Likewise, it would be unreasonable to pay other service connection charges which were designed to recover SWBT'S cost of its retail operations to the extent that the new entrant uses different mechanisms to access the other SWBT operational support systems.

55. Requiring the new entrant to pay the service connection costs in addition to the interface costs for access to SWBT's operational support systems would have the effect of providing an over-recovery of cost for SWBT, effectively reducing the Commission ordered

¹⁴ See Sprint Agreement, Attachment Resale, § 3.1. Although there is no indication in this paragraph that service connection charges will apply, it is AT&T's understanding that SWBT intends to apply them anyway. All currently approved agreements have similar provisions.

level of discount available to new entrants. This inappropriate increase in the cost of resold services to new entrants will reduce the level of price competition with SWBT. Likewise, such pricing violates Section 252(d)(3) and, therefore, does not fulfill the requirements of Section 271(c)(2)(B)(xiv) of the competitive checklist.

56. SWBT fails to make available for resale promotions of 90 days or less in any of its approved interconnection agreements. While the FCC established a presumption that such promotions need not be offered at a wholesale discount, it did not indicate that incumbent LECs could refuse to make the service available at the retail promotional rate. In the most recently issued Arbitration Order between AT&T and SWBT, the Kansas Corporation Commission found that when SWBT offers a promotion of 90 days or less at a rate which is less than the wholesale rate, SWBT must make the promotion available at the promotional rate. The Arbitrator's ruling in that case states:

The Arbitrator's ruling is also based upon the necessity of promoting competition within the framework of a level playing field. The Arbitrator is concerned about an anti-competitive effect which might arise to AT&T's detriment should they be denied the opportunity to purchase promotional services of less than 90 days at the promotional rate. The Arbitrator foresees that a situation might arise where SWBT's costs for such a service might be lower than AT&T's and that SWBT might be able to undercut AT&T's prices in an anti-competitive manner. Further, there will be no harm to SWBT if AT&T is permitted to purchase services at the promotional rate.¹⁵

The absence of effective provisions in approved interconnection agreements or SWBT's SGAT which allow the resale of SWBT's promotions of less than 90 days at the promotional rate is an outright prohibition on the resale of a telecommunication service, is unreasonable and discriminatory, and in violation of Section 251(b)(1).

¹⁵ Arbitrator's Order, Kansas Docket No. 97 AT&T-290-ARB, at 12-13.

XVIII. RECIPROCAL COMPENSATION

A. SWBT's Reciprocal Compensation Proposal Does Not Comply with the Competitive Checklist.

57. SWBT's provision for reciprocal compensation in its approved interconnection agreement does not comply with the competitive checklist. The checklist requires that SWBT's reciprocal compensation arrangements be in accordance with the requirements of Sections 252(d)(2) and 271(c)(2)(B)(xiii). Section 252(d)(2) provides that a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless: (1) they provide for mutual and reciprocal recovery by each carrier of costs associated with the transport and termination of traffic on each carrier's facilities; and (2) such costs are determined on the basis of a reasonable approximation of the additional costs of terminating such calls. The FCC found that the appropriate determination of these cost should be based on forward looking costs.¹⁶ The rates that SWBT proposes have not been determined on the basis of a reasonable approximation of additional costs of terminating such calls in accordance with Section 252(d)(2).

58. The rates for reciprocal compensation are not cost-based. No final determination has been made with respect to the cost basis for SWBT's rates. Hearings have not been held to make such determination. The excessive level of the rates proposed by SWBT will be detrimental to the development of competition to the extent that traffic between SWBT and any new entrant is not balanced. It is essential that reciprocal compensation be based on forward looking cost. Because SWBT's reciprocal compensation rates do not comport with the requirements of Section 252(d)(2), it has failed to satisfy this element of the competitive checklist. Until such rates are implemented, SWBT cannot comply with Section 271(c)(2)(B)(xiii) of the competitive checklist.

¹⁶ FCC Order, ¶ 1054.

B. SWBT's Definition of "Local" Traffic Allows SWBT to Discriminate Against Other Telecommunications Providers.

59. SWBT's definition of "local" traffic allows SWBT the opportunity to further impede competition and discriminate against other telecommunications providers. The traffic SWBT proposes to define as "local" traffic subject to reciprocal compensation would not include optional extended local calling traffic, sometimes referred to as Extended Area Service (EAS). If allowed to exclude this traffic from treatment as local, SWBT can extend its long standing EAS strategy to reduce the effectiveness of competition for intraLATA services and if granted authority to provide In-Region service, throughout the state.

60. Extended Area-type Services generically are at the heart of a SWBT plan that converts calls that would have been toll into local calls.¹⁷ These plans have been labeled in various ways but the basic premise is the same: a customer pays either a higher flat rate (mandatory) or an additional flat rate (optional) and receives an increased local calling scope. Not only does the end user no longer pay usage sensitive toll rates, the customer in most cases is also no longer required to dial the 1+ prefix to call within the outlying areas. For all intents and purposes, the call is local.

61. Local Plus is one such service proposed by SWBT in Oklahoma. While SWBT does not call the service EAS, it has the characteristics I discussed above. Specifically, 1) Local Plus can be found in SWBT's Local Exchange Tariff; and 2) SWBT describes the service as "an optional LATAwide local calling plan" providing customers "unlimited outward calling to points within their LATA for a flat monthly fee."

¹⁷ SWBT Consumer Segment Extended Area Service Product Plan, Executive Summary, at 5.

SWBT's tariffed service description is as follows:¹⁸

6.1 Local Plus is an optional one way, outward service whereby customers can place calls to other customers in exchanges within their LATA for a flat, monthly fee.

6.2 The direct dialed calls applying to this plan will be completed using the local dialing pattern.

62. My understanding of SWBT's EAS expansion strategy is based on my review of a SWBT company-wide EAS expansion plan which was produced in discovery in the context of a regulatory proceeding in Texas. That plan, which is attached as Exhibit PG-3, details a strategy to use EAS as a mechanism to expand local calling areas. The plan clearly spells out SWBT's intent to expand local calling areas as a way to convert existing intraLATA toll calls to local exchange calls in order to prevent erosion of SWBT's complete dominance of the intraLATA toll market.¹⁹ The plan predicts the problems that interexchange carriers (IXCs) have subsequently faced in competing with EAS.²⁰ This is in part because SWBT's service is flat rated, while the access charges that SWBT imposes on IXCs are usage sensitive and set at levels substantially in excess of forward-looking cost. Thus, it does not take long for the usage sensitive access rates to far exceed the flat rated price that SWBT proposes to charge for the EAS-type service. Exhibit PG-4 demonstrates the differences in margin a CLEC and an IXC would face in attempting to compete with SWBT for the provision of these services.

63. As demonstrated by SWBT's Local Plus Service, these EAS-type services are generally targeted to appeal to high volume outbound intraLATA toll customers. These customers are likely to make more outbound calls than they receive. The relative cost of serving

¹⁸ See SWBT Application filed in Cause No. PUD-960000296.

¹⁹ SWBT Consumer Segment Extended Area Service Produce Plan, Competitive Analysis, at 12.

²⁰ *Id.*

these customers demonstrates the potential price squeeze a new entrant will face. Even if SWBT and a CLEC were to charge each other access charges reciprocally between these areas, because these customers have been targeted for their high outbound volume a disparity in charges could easily occur because in the early stages of competition, SWBT will still have the overwhelming share of end users. Thus for these high volume, outbound calling customers, the new entrant would likely be terminating substantially more traffic on the SWBT network than it receives from SWBT. Therefore, to the extent that access charges are applied to these calls and those access charges exceed their forward-looking cost, the new entrant originating service through UNE will be substantially disadvantaged. For a CLEC Reseller or IXC, the problem is even worse.

64. As demonstrated on Exhibit PG-4, SWBT's cost of providing access is substantially less than the price it would impose on the new entrant even assuming SWBT's excessive SGAT rates. Clearly when the costs imposed on a new entrant exceed the cost SWBT incurs in provisioning the service by such substantial amount, and that service is essential to the new entrant's ability to provide service, such treatment is discriminatory.

65. Requiring SWBT to impute the prices it charges to new entrants and IXCs as costs in determining SWBT's retail prices will not prevent discrimination. Exhibit PG-4 demonstrates the effect of non-cost based pricing on 1) a CLEC which originates a toll or optional EAS-type call over UNE, and 2) a CLEC using resale or an IXC. For a customer with 6 hours or 300 minutes of use SWBT would have revenue of \$30.00, incur access costs of \$4.50 assuming SWBT's excessive SGAT rates and retain a margin to cover other costs of \$25.50. Assuming the same price to the consumer; a CLEC using UNE to originate the call would receive \$30.00 in revenue but would have to pay SWBT \$13.20 to originate and terminate the call, leaving only

a margin of \$16.80 to cover remaining costs. Obviously, this situation would allow SWBT to reduce its price to the consumer to \$13.20 and still retain a margin of \$8.70, while the CLEC's margin would be reduced to \$0 if it matches SWBT's end user price. Thus, while imputation is a necessary condition for competition to develop, it is not in and of itself a sufficient condition. This condition can only be met by insuring that all of the prices SWBT is allowed to impose on a new entrant or any competing telecommunications provider are based on forward-looking cost. Only then will SWBT's pricing be non-discriminatory.

66. As discussed above, the situation for a CLEC Reseller or IXC that is required to pay SWBT's access charge, to originate as well as terminate calls is far worse. SWBT would charge the CLEC or IXC \$25.50, allowing only a margin of \$4.50 to cover all other costs. As Exhibit PG-4 indicates, the problem is made worse as volumes grow.

67. While the charge for access that SWBT imposes on CLEC Resellers and IXCs might not be an item on the competitive checklist, SWBT's entry into the interLATA long distance market will not further the public interest if allowed while the lack of facilities-based competition and appropriately priced UNEs continue to permit SWBT to maintain access charges at levels which far exceed forward-looking cost.

VERIFICATION

STATE OF TEXAS)

COUNTY OF Dallas)

I, PHILLIP L. GADDY, of lawful age, being first duly sworn, now state: that I am authorized to provide the foregoing statement on behalf of AT&T; that I have read the foregoing statement; and the information contained in the foregoing statement is true and correct to the best of my knowledge and belief.

Phillip L. Gaddy
PHILLIP L. GADDY

AT&T

Government Affairs Director

SUBSCRIBED AND SWORN TO BEFORE ME this 6th day of March,
1997.

Debbie Crawford
Notary Public

My Commission Expires:

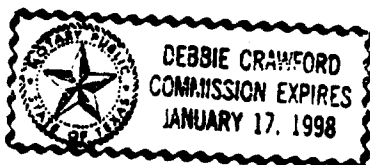


Exhibit PG-1
3 Pages

EXHIBIT PG-1
PRIOR TESTIMONY

EXHIBIT PG-1

PHILLIP L. GADDY

PRIOR TESTIMONY

<u>YEAR</u>	<u>DESCRIPTION</u>
1984	Texas Docket No. 5113, Phase II - Petition of PUC for an Inquiry Concerning the Effects of the Modified Final Judgment and the Access Charge Order Upon SW Bell and the Independent Telephone Companies of Texas. (Direct)
1985	Texas Docket No. 6181 - Application of Southwestern Bell Telephone Company for Access Service Tariff Revising Existing Tariff Provisions for Transition to Equal Access. (Direct)
1987-88	Missouri Case No. TR-88-8 - In the Matter of Southwestern Bell Telephone Company's Proposal to Introduce ESSX-400 II. (Direct and Surrebuttal)
1988	Texas Docket No. 7652 - Application of General Telephone Company of the Southwest for Tariff revision to Offer CentraNet™ Service. (Direct)
1988	Texas Docket No. 8220 - Application of Contel of Texas, Inc. to Provide Digital Centrex Service. (Direct)
1989	Texas Docket No. 8672 - Application of Southwestern Bell Telephone Company to Provide Plexar Custom Service to Specific Customers. (Direct)
1989	Missouri TC No. 89-14, et al - The Staff of the Missouri Public Service Commission, Complainant, v. Southwestern Bell Telephone Company, A Missouri Corp., Respondent. (Direct)
1989	Texas Docket No. 8395 - Petition for Declaratory Judgment and Relief of AT&T Communications of the Southwest, Inc. Against Southwestern Bell Telephone Company. (Direct and Rebuttal)
1990	Texas Docket No. 8585 - Petition of General Counsel to Inquire into the Reasonableness of the Rates and Services of Southwestern Bell Telephone Company. (Direct and Reply)
1991	Texas Docket No. 10131 - Application of Southwestern Bell Telephone Company to Revise the WATS Tariff to introduce Maximizer 800 Service™ Common Line 800 Service. (Direct and Supplemental Direct)

- 1991 Texas Docket No. 10463 - Application of Southwestern Bell Telephone Company to Revise Section 3, Sheet 4.1, of the Access Service Tariff. (Direct)
- 1992 Texas Docket No. 10776 - Application of Southwestern Bell Telephone Company for Expedited Review of an Administrative Tariff Revision in the Texas Intrastate Access Service Tariff. (Direct)
- 1993 Texas Docket No. 11840 - Joint Petition of Southwestern Bell Telephone Company and GTE Southwest, Inc. to Provide Extended Area Service to Certain Communities of the Lower Rio Grande Valley. (Direct)
- 1994 Texas Docket No. 12784 - Southwestern Bell Telephone Company Statement of Intent to Change and Restructure the Company's Local Transport and Directory Transport Categories of its Switched Access Service. (Direct)
- 1994 Arkansas Docket No. 93-125-U - In the Matter of the Consolidation of Expanded Local Calling Scopes and the Appropriate NTS Allocation and Return of Investment for the Arkansas Carrier Common Line Pool.
- 1996 Texas Docket No. 14659-Application of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. for Usage Sensitive Loop Resale Tariffs.
- 1996 Texas Docket No. 16226 - Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and Southwestern Bell Telephone Company
- 1996 Oklahoma Cause No. PUD 960000218 - Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996
- 1996 Missouri Case No. TO-9740 - In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company
- 1996 Oklahoma Cause No. PUD960000242 - Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with GTE Southwest, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996
- 1996 Missouri Case No. TO-97-63 - In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement Between AT&T and GTE Midwest Incorporated

1996

Texas Docket 16300 - Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitrator to Establish an Interconnection Agreement between AT&T and GTE Southwest Incorporated and Contel of Texas, Inc.

Exhibit PG-2
34 Pages

EXHIBIT PG-2

REBUTTAL TESTIMONY OF DANIEL P. RHINEHART

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF AT&T COMMUNICATIONS)	
OF THE SOUTHWEST, INC. FOR COMPULSORY)	
ARBITRATION OF UNRESOLVED ISSUES)	
WITH SOUTHWESTERN BELL TELEPHONE)	CAUSE NO. PUD 960000218
COMPANY PURSUANT TO §252(b) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

REBUTTAL TESTIMONY

OF

DANIEL P. RHINEHART

File Date: September 30, 1996

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CAUSE NO. PUD 960000218

**AT&T COMMUNICATIONS OF THE SOUTHWEST
REBUTTAL TESTIMONY OF DANIEL P. RHINEHART**

I. INTRODUCTION

1
2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 **A. My name is Daniel P. Rhinehart. My business address is 8911 Capital of Texas Highway,**
4 **Suite 1310, Austin, Texas, 78759.**
5

6 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?**

7 **A. I am employed by AT&T as District Manager - Government Affairs.**
8

9 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

10 **A. I graduated from the University of Nevada at Reno in 1977 with a Bachelor of Science**
11 **Degree with High Distinction in Education, majoring in mathematics. In 1987, I received**
12 **a Masters of Business Administration degree, with Honors, from Saint Mary's College in**
13 **Moraga, California. In addition, I have attended numerous training courses covering the**
14 **topics of separations, telephone accounting, and long run incremental costs. I have**
15 **completed the Brookings Institute course on Federal Government Operations and the**
16 **University of Southern California Center for Telecommunications Management, Middle**
17 **Management Program in Telecommunications.**
18

19 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

1 A. I joined Nevada Bell in 1979 as a Staff Specialist for the Residence Installation and
2 Maintenance organization. My next assignment was in Nevada Bell's Separations and
3 Settlements organization where I was responsible for reviews of independent telephone
4 company separations and settlements studies.

5
6 In 1984, I joined AT&T's separations organization in San Francisco and was subsequently
7 promoted in August 1985 with responsibility for mechanized separations results and
8 analysis for AT&T Communications of California and later for exchange carrier cost
9 analysis. In 1987, I was assigned as Regulatory Manager overseeing AT&T's participation
10 in local exchange carrier regulatory proceedings. I was promoted in April 1995 to my
11 present position, District Manager - Government Affairs, with responsibilities in the states
12 of Texas, Kansas, Arkansas, Missouri, and Oklahoma. In that role, I am continuing and
13 expanding oversight of AT&T's participation in local exchange carrier and interexchange
14 carrier regulatory proceedings. In addition to my regular work assignments, I held the
15 position of vice chairman of the \$300 million California Universal Lifeline Telephone
16 Service Trust Fund for approximately two years prior to my relocation to Texas.

17
18 Q. HAVE YOU PREVIOUSLY SPONSORED TESTIMONY IN OTHER
19 REGULATORY PROCEEDINGS?

20 A Yes I have sponsored testimony in Texas, Kansas, Missouri, and California. Attachment
21 DPR-1 identifies the proceedings in which I have provided testimony and the topics I have
22 addressed

II. PURPOSE AND RECOMMENDATIONS

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A. PURPOSE

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purposes of my testimony are to: rebut the testimonies of SWBT witnesses J. Michael Moore, Barbara A. Smith, and Dale A. Lundy and to critique the cost studies provided and sponsored by these Southwestern Bell Telephone Company (SWBT) witnesses in this case. SWBT's avoided cost studies will be critiqued by AT&T witness Denise Crombie. I will also describe the qualities that a good cost study should demonstrate and list cost study requirements of the Oklahoma Corporation Commission (Commission) and the Federal Communications Commission (FCC).

B. RECOMMENDATIONS

Q. WHAT ARE YOUR RECOMMENDATIONS REGARDING THE SWBT STUDIES YOU HAVE REVIEWED?

A. I recommend that the Commission generally reject any use of the SWBT studies in this case because SWBT's studies are poorly documented, rely on unknown, inconsistent, or erroneous inputs, and, as a result, are not verifiable; produce unsubstantiated outputs; appear to reflect historical not-forward-looking costs and practices; and are in no way reproducible by the Commission or by AT&T. Further, I recommend that the Commission rely on the most recent Hatfield Model cost study as sponsored by AT&T's witness Mr. Robert Flappan.

1 As I will explain later, SWBT's studies are a proverbial "black box" in that they are
2 frequently little more than spreadsheets which include input values based on proprietary
3 data that have either not been provided at all, in any timely manner or as a complete cost
4 study. The studies also include undocumented judgments or assumptions, and outputs of
5 other models that have not been provided.

6
7 **III. SWBT TESTIMONIES**

8 **Q. WHAT POSITIONS DO THE SWBT WITNESSES TAKE WITH WHICH YOU**
9 **DISAGREE?**

10 **A.** Generally, these SWBT witnesses describe what they believe the FCC requires regarding
11 unbundled element cost studies. Then they describe how the studies which they provide
12 or sponsor in their testimony completely meet these requirements. As stated by Mr.
13 Moore on page 11 of his testimony:

14 "[t]hese studies are consistent with the FCC's TELRIC methodology
15 because they study the entire increment of output, use forward-looking
16 least cost technology,..."
17

18 While I do not disagree with the FCC quotes which SWBT witnesses provided regarding
19 cost study requirements, I do disagree with SWBT's interpretation of FCC language.
20 Equally as important, I also disagree that the SWBT cost studies which were provided
21 meet FCC requirements as claimed by these witnesses, including the requirement to use
22 forward looking, most efficient, least cost technology based costs (Lundy testimony, pages
23 6 - 7) I will discuss extensively later in my testimony that SWBT did not provide

1 adequate supporting information for their cost studies to prove they meet the FCC or this
2 Commission's requirements, and that the information that was produced, in fact, indicates
3 otherwise.
4

5 Q. **WHAT IS THE SWBT INTERPRETATION OF FCC LANGUAGE WITH**
6 **WHICH YOU DISAGREE?**

7 A. On page 9 of his testimony, in Q & A 17, Mr. Lundy cites the FCC as follows:

8 Per-unit costs shall be derived from total costs using reasonably accurate
9 "fill factors" (estimates of the proportion of a facility that will be "filled"
10 with network usage); that is, the per-unit costs associated with a particular
11 element must be derived by dividing the total cost associated with the
12 element be a reasonable projection of the actual total usage of the element.
13

14 Mr. Lundy interprets this to mean that the FCC is saying that TELRIC studies should use
15 actual network utilization, or in another words, its current or historical fill factor, as well
16 as existing switches. Mr. Lundy is inappropriately focusing on the FCC's use of the words
17 "actual total usage". What he neglects are the preceding words: "estimates of the
18 proportion of a facility that will be 'filled' with network usage"; and "reasonable
19 projections of the actual total usage" (emphasis added). It is clear when reading this
20 paragraph in context, that this follows the FCC's standards that "the reconstructed local
21 network will employ the most efficient technology for reasonable foreseeable capacity
22 requirements." (emphasis added) [FCC Order¹, ¶685]. SWBT, through its interpretation,

¹ *In the Matter of Implementation of the Local Competition Provision of the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. August 8, 1996) (FCC Order).

1 attempts to twist the FCC statement to advocate the use of SWBT's historical, inefficient
2 fill factors and embedded switches for cost study purposes.

3
4 **Q. PLEASE DISCUSS OTHER STATEMENTS OR POSITIONS IN THE SWBT**
5 **TESTIMONIES WITH WHICH YOU TAKE ISSUE.**

6 **A.** Mr. Lundy makes several statements with which I take issue. First, Mr. Lundy suggests at
7 page 3, Q & A 8, that the way TELRIC studies are performed should not be controversial
8 in arbitration. He insists that "some parties may try to create arcane cost controversies in
9 hopes of gaining some advantage," and that "the Commission should reject these tactics as
10 irrelevant".

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12 This statement by Mr. Lundy is simply ludicrous. It is each party's responsibility,
13 especially the petitioning competitive LEC's (as well as the Commission's), to carefully
14 evaluate cost studies in this proceeding. In fact, AT&T has provided its own cost studies
15 in order to ensure proper studies are available for use by this Commission in determining
16 appropriate costs and rates. These "tactics" are far from "irrelevant", they are at the very
17 heart of the issues of interconnection, unbundling and local exchange competition.

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19 Second, Mr. Lundy asserts on page 4, Answer 10, that the incremental methodology used
20 by SWBT does not include a number of cost types (i.e., certain retailing, embedded, or
21 opportunity costs, or universal service subsidies). He claims that since SWBT has "filed
22 incremental cost studies before this Commission for years," that it is clear these types of